

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TRAVIS C.D. PENDLEY,

Petitioner,

v.

JASON BENNETT,

Respondent.

CASE NO. 2:23-cv-01141-DGE

**ORDER ADOPTING REPORT
AND RECOMMENDATION BUT
REFERRING MATTER TO
MAGISTRATE JUDGE TO
CONSIDER PETITIONER'S
REQUEST TO AMEND**

Before the Court is the Report and Recommendation ("R&R") of United States Magistrate Judge Grady J. Leupold. (Dkt. No. 29.) Having reviewed the Report and Recommendation and the remaining record *de novo*, and considered Petitioner's objections, the Court ADOPTS the R&R.

I. FACTUAL AND PROCEDURAL BACKGROUND

On August 11, 2023, Petitioner Travis C.D. Pendley filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his 2018 King County convictions for second degree murder and theft of a firearm. (Dkt. No. 4.) The petition raises 13 grounds for relief. (*Id.*) On September 7, 2023, Judge Leupold granted Petitioner's motion to stay this case so he could attempt to exhaust his state court remedies. (Dkt. No. 11.) On July 8, 2024, Judge

1 Leupold issued an order lifting the stay and directing Respondent to file and serve an answer to
2 the petition within 60 days. (Dkt. No. 17.)

3 On August 27, 2024, Respondent filed a response to the petition. (Dkt. No. 19.)
4 Respondent argued Petitioner's grounds for relief two, three, four, six and seven have not been
5 properly exhausted and are now procedurally barred. (*Id.*) Respondent further argued grounds
6 one, five, ten, and twelve are barred by Petitioner's guilty plea. (*Id.*) Finally, Respondent argued
7 Petitioner's grounds for relief eight, nine, eleven, and thirteen, all of which allege ineffective
8 assistance of counsel, should be dismissed because the rejection of these claims by the state
9 courts was not an unreasonable application of clearly established federal law. (*Id.*) Petitioner
10 filed a Traverse on December 4, 2024. (Dkt. No. 28.)

11 On February 4, 2025, Judge Leupold issued an R&R largely adopting Respondent's
12 arguments.¹ (Dkt. No. 29.) After being granted an extension (Dkt. No. 31), Petitioner filed
13 objections to the R&R on March 11, 2025. (Dkt. No. 32.)

14 II. LEGAL STANDARD

15 A district court reviews *de novo* "those portions of the report or specified proposed
16 findings or recommendations to which [an] objection is made." 28 U.S.C. § 636(b)(1)(C); *see*
17 *also* Fed. R. Civ. P. 72(b)(3) ("The district judge must determine *de novo* any part of the
18 magistrate judge's disposition that has been properly objected to.").

23 ¹ Judge Leupold found Petitioner did properly exhaust ground four, but concluded that any relief
24 on this ground was precluded by Petitioner's guilty plea. (Dkt. No. 29 at 14, 21.)

III. DISCUSSION

In his objections, Petitioner does not, for the most part, directly refute the reasoning set forth in the R&R.² Rather, Petitioner re-asserts the arguments presented in his Traverse and urges the Court to correct what he characterizes as a “structural miscarriage of justice.” (Dkt. No. 32 at 3.) The Court finds no error in Judge Leupold’s analysis and will adopt it in full.

Petitioner also asks for leave to supplement his petition “in the furtherance of clarity on the issues[.]” (*Id.* at 21.) According to Petitioner, he “wishes to assert a claim of Ineffective Appellate Counsel.” (*Id.*) This appears to be the first instance in which Petitioner has raised a claim for ineffective assistance of counsel related to his appellate attorney. Respondent raises valid concerns that this new claim may be barred for failure to exhaust or that the attempt to amend at this stage may be improper. Notwithstanding, this request to supplement will be referred to the Magistrate Judge for review and consideration.

IV. ORDER

The Court, having reviewed the R&R of Magistrate Judge Grady J. Leupold, objections to the Report and Recommendation, and the remaining record *de novo*, does hereby find and ORDER:

- (1) The Court ADOPTS the Report and Recommendation (Dkt. No. 29);
- (2) Petitioner’s federal habeas Petition (Dkt. No. 4) is DENIED;
- (3) A certificate of appealability shall not issue in this case; and
- (4) The Clerk is directed to send copies of this Order to Petitioner, counsel for Respondent, and to the Hon. Grady J. Leupold.

² Petitioner presented more detailed arguments in his Traverse (Dkt. No. 28), which Judge Leupold evaluated in the R&R.

1 The Court further ORDERS that Petitioner's request to supplement his Petition as
2 identified in Dkt. No. 32 at 21–24 is referred to the Magistrate Judge Grady J. Leupold for
3 review and consideration.

4 **DATED** this 13th day of June, 2025.

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David G. Estudillo
United States District Judge